



LAW MANTRA THINK BEYOND OTHERS

(I.S.S.N 2321- 6417 (Online))

Ph: +919310053923 Website: journal.lawmantra.co.in

E-mail: info@lawmantra.co.in contact@lawmantra.co.in

ANALYSIS OF DOMESTIC VIOLENCE LAW IN INDIA *

Introduction:

Generations have come and gone with attending various problems of the society and trying utmost for the welfare, but the place of women has never noticed much dramatic changes. It has been so after the political parties started competing for mere votes keeping women and children welfare and rights at their priority to win. Being a daughter, sister, wife, mother, employee, etc, women too needed a protection for their rights same as the men to stop the exploitation when working and standing shoulder to shoulder with them¹. Few of the laws in India for protection of rights of women are- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), 2013; The Prohibition of Child Marriage Act, 2006; Special Marriage Act, 1954; Dowry Prohibition Act, 1961; Indian Divorce Act, 1969; Maternity Benefit Act, 1861; Medical Termination of Pregnancy Act, 1971; National Commission for Women Act, 1990; Equal Remuneration Act, 1976, etc. In 1992, India rectified the Fundamental Rights of the Children by the United Nation Convention². The rights of children are- Right to survival (to life, health, nutrition, name, and nationality), Right to Development (to education, care, leisure, recreation, and cultural activities), Right to Protection (from exploitation, abuse, neglect), Right to Participation (to expression, information, thought, religion).

* Ms. Perna Chugh, Phd student at NUJS, Kolkata.

¹ Tanvi Dubey, Know Your Rights, June 24, 2006, YOUR STORY, <https://yourstory.com/2016/06/laws-that-protect-women-rights>.

² About Child Rights, CRY (CHILD RIGHTS AND YOU), <https://www.cry.org/child-rights>.

Vedic period was an era of women glory. They enjoyed an equal amount of freedom and education. From studying in Gurukuls, learning Vedas to undergoing Upanayana, everything was allowed to the females. It was an era of absence of purdah system, dowry and polygamy. Eventually in the Post-Vedic period there was a setback and various restrictions were put on women and their liberty. This period was also a start for dowry rituals. This era exploited women both socially and culturally with the only right to property recognized for them “Streedhan”. Then in the Medieval period after the invasions by Alexander and the Huns, the value of women in society came to null. That period initiated veil system, sati, child marriage, female infanticide, polygamy, devadasi, etc. Till all this time period females were oppressed. During the British period there were two vital movements “Social Reform Movement” of the nineteenth century and “Nationalist Movement” of the twentieth century.

Social Reform Movement raised the issues of sati, temple prostitution, purdah, widows, polygamy, child marriage, and property and education rights. Whereas Nationalist Movement drew females towards political affairs. Many laws were passed to rectify the evils from our society, such as Act legalizing remarriage of widow, Child Marriage restraint Act, an Act recognizing Hindu Women’s Right to Property, etc. Next was the era of our Independence and constitution framing. The framers were well aware of the problem of emancipation of the female sex. Our Preamble secures all the citizens justice including social, economic and political; liberty of thought, expression, belief, faith and worship, equality of status and opportunity both for men as well as women³. Articles 14, 15 and 16 protect equality.

The Thomson Reuters Foundation released their survey on “The world’s most dangerous countries for women 2018.” According to them India tops in the list of most dangerous country for women based on an opinion poll among 193 United Nations member states. Though the government dropped the report saying they used faulty method. India ranked the most dangerous country on the following basis: the risk women faced by sexual abuse, sexual harassment, eve teasing, molestation, traditional and cultural practices, human trafficking including sex slavery, forced

³ India Const. Article 14, 15, and 16.

labor and domestic violence and the list of violence against women are still increasing on a higher level⁴.

Sexual harassment at workplace is the bullying or insistence of a sexual nature and unwelcomed sexual behavior which makes a person feels humiliated, terrified or offended. It is not consensual in nature such as friendship, flirtation or interaction and not a behavior that is mutually consented. It can be expressed by physically, verbally or written.

The literal meaning of this word is making inappropriate comment or an action by man to women in a public place, which on definition and on words doesn't sounds dangerous or too harmful in simpler words. But, once you put yourself in it and imagine, it may tell you about what the victim must have felt. Eve teasing is stated to be serious as it is the starting to the women crime, and further it takes a cruel face. But the truth can't be denied that even being a severe offence, eve teasing is not taken that seriously at the first place as it should have been.

Most of the cases of eve teasing go unreported in rural, as well as in urban areas just because he policemen proves to the family that the specific incident is not as serious as to be stated as crime. It's true that the Indian Law and Constitution doesn't use the word "Eve Teasing", still has a provision through Section 294 of Indian Penal Code which sentences a man found guilty of making a girl or women the target of obscene gestures, remarks, songs or recitation to a maximum jail sentence of three months. If taken in consideration by the Law and the Police Department, this one of the most serious offence and crime against a women.

Sexual assault or abuse of a person in an aggressive manner is stated to be Molestation or sexual abuse in a wordily manner. It would be still better if it would be same as written or stated in words. Molestation and sexual abuse, nowadays refers to Hazardous harassment or violence which is mainly taken against women or child, irrespective of their age. And due to lack of humanity in respective case handlers, this criminal offence has taken a gigantic and brutal face in the current society. Suppressing a women or a child just to prove authority was the starting of this crime called Molestation and sexual abuse nowadays, which brutally ends at rape and murders eventually. Section 354 of Indian Penal Code which sentences a man found guilty in assault or use of criminal

⁴ The world's 10 most dangerous countries for women, 2018, THOMSON REUTERS FOUNDATION, <http://poll2018.trust.org>.

force against a women or child to tenure of 1-5 years of imprisonment with fine, which even states that this is a non bailable offence. Even having such strict laws to this serious offence, most of the cases go unregistered due of lack of trust of public in the Police Department which soon needs to be resolved.

With no doubts, Rape is the worst criminal offence that could be taken against women. Rape means sexually assaulting women, usually involving sexual intercourse without the person's consent, but this was the meaning of Rape until 2012 in India. After Nirbhaya case, 2012, in the definition of Rape there were some changes made. Now the definition of Rape is "Sexually assaulting women or child, usually involving sexual intercourse or other forms of sexual penetration carried out without that person's consent." Since that case, the rape statistics of this country has been continuously increasing, so is the brutality. According to the National Crime Records Bureau (NCRB) 2013 annual report, 24,923 rape cases were reported across India in 2012. Out of these, 24,470 were committed by someone known to the victim (98% of the cases). Section 375 of Indian Penal Code explains the conditions of man who is said to commit Rape. Punishment for the offence has been changed. A man committing the offence of Rape would be liable for imprisonment up to three years for the first offence, and shall also be liable to fine and for any subsequent conviction would be liable for imprisonment up to five years and with fine. With no doubts, Rape is most cruel and brutal crime that destroys the physical and mental state of the victim if she survives.

Sexual Harassment at Workplace:

As men have been dominating over women from ages, but now in the 20th century where females are working equally with them their safety is one of the crucial topics as sexual harassment at workplace is very common. India has an act safeguarding the abuses of sexual harassment at workplace which ensures women safety⁵. It includes the languages and sexual overtones, annexation of private space with a male colleague being too close against a comfort zone, subtle touches and intimation. Harassment may include comments about appearance or clothes, staring at someone's body, abusive, degrading, patronizing or belittling remarks or behavior, sexist remarks or jokes, unwelcomed sexual invitations or pressure. Promise or threats concerning

⁵ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, no.14, Acts of Parliament (INDIA).

employment conditions in exchange for sexual favors, display of sexually explicit material, touching, caressing, hugging, even indecent assault or rape.

This offence violates the law of Human Rights, gender equality and injustice. Human Rights may include right to life and liberty, the right to work and many more⁶. Universal Declaration on Human Rights was adopted in 1948, and mentioned that women along with men are entitled to all the rights in its article 1 and 3. Equality is another key point for the development of a country keeping its citizen at the same platform. In United Nations Millennium Declaration 2000 six fundamental values were added. It said equality to be the compulsory opportunity and equal rights must be assured for both men and women. In today's world, it's not men's rule but the liberty enjoyed by everyone. Inequalities have existed for so long and unfortunately it still needs to be removed from various sections of the society.

Women are now given liberty for education and work with the flow of the society. This norm started against the old customs, and when things are against customs they need to be safeguarded first. Under the guidelines of the Supreme Court it is the duty of the employer and other staffs to provide safe environment to the female staffs and the procedures for the resolution, settlement of acts of sexual harassment. Sexual Harassment at workplace includes physical contact and advances, demand or request for sexual favors, sexually-colored remark, showing pornography and other unwelcomed gestures. It is intricate to determine a unfriendly sexual behavior at a work place. The sensitivity level of both men and women are different, according to a survey 2/3 of men will be happy if approached sexually at a work place and others will not be. What happens here is the female workers who get affected by such incidents do not file complaints in the fear of losing their jobs or for the thoughts of the society. It is important to maintain workplace relationship with everyone and due to the hostile environment relationship leads to favoritism, and interpersonal relations increase and if not so then there is an advance to sexual harassment. Generally no one stands against these harassments and exploitation for the benefits like salary, promotion or continual of employment. The stereotype society of whistling at a female passing by, commenting on her, standing in way, groping hands without consent are the ways men harass the women. This

⁶ UNIV. DECLARATION OF HUMAN RIGHTS, Article 1, all human beings are born free and equal in dignity and rights.

Article 3, everyone has the right to life, liberty and security of person.

conduct happens at workplaces mainly with a reason to grant favors to women where they are bound to helpless self interest⁷.

According to a data released on YouTube by 'Vitamin Stree' even today India ranks at 139th position out of 145 countries when it comes to economic participation of women. Between the years 2004-2012 around 20 million Indian women have quit their jobs. The Indian GDP can rise upto seven hundred billion dollars by the year 2025 if gender parity can be achieved and more women can be appointed.

The Tarun Tejpal case mainly known as Tehalka case shows how India is depressed with harassment and the careless handling of such cases when it comes to high profile culprit.⁸The landmark case of Vishakha who was a social-activist and tried to stop a child marriage of an infant who was barely less than 1 year old, Ramkaran Gujjar the father of that infant raped the lady with his five other friends in front of her husband. She didn't even get proper help from the police and was even taunted the whole night without taking the investigation seriously. Though the High Court gave its decision saying the case of gang rape but there are so many such cases in the rural areas where females are sexually harassed and raped at workplaces. After this case sexual harassment at workplace was taken seriously and the Sexual Harassment at Workplace Bill was passed by the Lok Sabha defining the sexual harassment as laid down by the S.C in the Vishakha case⁹. Through the case of Medha Kotwal Lele the S.C gave directions to all the states and U.T to amend their respective Civil Service Conduct Rules to specifically include Sexual Harassment at workplace¹⁰. The case of CEO of Ford Motor Company in its Chicago plant 30 plaintiffs came forward to bring the case in light for sexual harassment in their company and the case got settled in almost \$10 million.

Eve-Teasing, Molestation, Sexual-Abuse and Rape:

You can't be a woman and have not been atleast once eve-teased on the roads. A prurient stare, whistle, well-timed clap, unwarranted bump, unwanted cheap touch, lingering look, annoying gestures, humming of suggestive song, passing cheap comments, bikes flying on the same route

⁷ Vitamin Stree, Women in the Work Place, 13 mar 2018, <https://www.youtube.com/watch?v=4KIyIgjB7qw>.

⁸ *Vishakha and others vs. State of Rajasthan*, 1997, 6 SSC 241 (INDIA).

⁹ *Medha Kotwal Lele vs. Union of India*, 2013, 1 SCC 297, (INDIA).

¹⁰ *Christie Van vs. Ford Motor Company*, 14-cv-8708, 2018, (CHICAGO).

and groping! Eve-teasing has various forms which harass the women injecting humiliation, fright, disgust and helplessness in her. Started by the Indian cinema, eve-teasing has replaced healthy flirting in the movies which in return is being depicted with every girl on the road. It is an unfortunate event which leaves psychological scars. It is a common euphemism throughout the world. The problem of eve-teasing started in the year 1970 when more of the females started going to colleges and working together with men. This decade was different as from the before time and culture. Later government enforced law to stop this new culture. But law has not been so strict till the date, being the reason for fearless road side Romeos. In Lucknow, Uttar Pradesh the C.M started an initiative named as “Anti Romeo Squad” in which the sleuth in plain normal cloths did patrolling at the public places such as colleges, schools, malls, parks, etc for safety of women and to take action against eve teasers and harassers. But unfortunately it failed badly and ruined the good initiative because of the low mentality of the police and government.

Sexual abuse is also referred to as molestation or sexual assault. It is an unwanted sexual behavior by a person upon another irrespective of gender and age. Like every crime and brutality that gets into effect against women leaves a scar, sexual abuse does the same which may take a bad stature in the forthcoming future. Sexual abuse mostly goes unregistered, because of a reason called self-shame. Well, either being registered or not, it has its losses to the victim. A sexual abuse may lead to Anxiety, Depression, Post-traumatic stress disorder, chronic pelvic pain, sexual dysfunction and many more things still left to be noted. The pain of being sexually assaulted or being sexually abused cannot be easily left over just for the sake of thanking that nothing more happens. Every age group of women suffers this phase of crime which leaves a trauma and a rage of not being able to anything, forever.

Being a woman in a country like India used to be a part of extreme privilege, as the women in this country were worshiped as goddesses. But in the 21st century, it's an absolute curse being a woman. Amongst the enormous heinous crimes that take place against a woman, one is "Rape". A sexual intercourse which takes place forcefully or any sort of sexual penetration is said to be rape. This is crime is said to be one of the most brutal crimes as it can leave behind gynecological disorders, reproductive disorders, sexual disorders, infertility, pregnancy complications, sexual dysfunction and much more to a women, and other that physical damage it causes emotional and psychological scars which prolongs until the last breath. More than being a crime, Rape is a

physical, mental and psychological mistreatment of females which turns into a trauma. The worst thing about this crime is that the age of the victim can be even 63 years or 8 months¹¹.

Section 294 of the IPC punishes a man for obscene acts, songs, remarks, etc¹². Section 509 of the IPC punishes for showing pornographic or obscene pictures, books or papers to a woman or girl. The Criminal Law Act, 2013 brought changes in the IPC, making sexual harassment an expressed offence under Section 354. The Amendment also made new acts like disrobing a woman without consent, stalking and sexual acts by person in authority an offense.

According to Thomson Reuters Foundation, India has been ranked at first position for the most dangerous country in the world whereas countries like Afghanistan and Syria which are have been in media for the exploitation of its citizen and females have been ranked second and third respectively. 548 global experts including 43 people from India were asked questions on-healthcare, access to economic resource and discrimination, customary practices, sexual violence, non sexual violence and human trafficking. India stood worst for the security of women, human trafficking, sexual violence and relation to cultural, religious and tribal traditions. Such crimes against women effect their life and achievements. With keeping the fear of eve-teasing, parents and elders start restricting the females to go out alone, stop them going to colleges or even restrict girl education. The problem is with the society itself. For stopping a crime you cannot confine a girl itself. When molestation happens, the molester is not blamed as much as the girl's cloth, behavior and freedom are blamed. As a society we don't understand the real problems which are the boy's mentality, their extra freedom, and teaching of domination which starts from the family level and instead we judge the girl and her upbringing. Sexually abused females and rape victims are often asked not to speak up. So many cases go unregistered just because of the parents of the girl think of their respect and dignity but not of the girls, she is asked to lose her respect but not stand for it. The men should be questioned about his doings but the real questions which come up are about the cloths of the girl, her freedom and her marriage, and all these together making her mouth shut for lifetime and live with the scars and guilt which is totally unfair. All this effect the

¹¹ INDIAN PENAL CODE, section 294, obscene acts and songs.

¹² INDIAN PENAL CODE, section 509, for the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the pruri-ent interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

females to leave school at an early age, some of them aren't allowed to go colleges, some are married early, etc. All the crimes against women confine them to homes and stop them from dreaming and achieving something in their life. The whole reason for her life is ended by her own family just because of the mistake of some other boy. We have adopted the new generation, but still there's more our society needs to change.

Conclusion:

It is said "Prevention is better than cure", and the time has proved this proverb. Every time we see a victim of eve teasing or any brutal crime that takes against women, we think of things that the victim should have done. If the ultimate loss is of the victim, then the prevention should start with teaching every girl about self defense mechanisms in the school and in adolescence itself. But only self defense teaching would not solve this issue, the respective victims should start speaking up in public or in their families and make sure that they file a F.I.R against and the case should not go unregistered. As this era is very friendly with gadgets and technologies, then the awareness about SOS and GPS trackers can play a very important role in safeguarding the to be victims, as on one touch it will send the respective location on a desired phone number to seek an easy and early help. Another good option is to carry safety equipment for any emergency. It is easy to carry a pepper spray, sharp small knife or a small blade in order to self defense. If the problem is faced by the females of the country, then first step to stop it will be from the females only.

After the continuous increase in sexual harassment at work places the rate of female working in a country decreases. A country with strict institutions for such crimes leads with both men and women working. To avoid such cases the best possible way is to keep an eye for incidents that cross the line of "okay" and "not okay" and stop them before they increase. Every employee from the manager to the newest hourly worker should be made aware of what sexual harassment is, what are the laws, what are the restrictions of the office and that it is not tolerable at all to misbehave with a women employee for any kind of advantage if it is out of her comfort level. For it training can also be scheduled before giving the employment. And as they say, there's no spark without fire, so the rumors should not be brushed off without giving needed attention. Most of the cases of sexual harassment end with no complaints because either they are not treated seriously or there is are various fears in the victim of losing their job, respect etc. So there should be certain confidentiality when such cases come and until the case ends. Every complaint of even the smallest

action of harassment should be treated appropriately and not neglected and should be stopped at the very first stage. As per the law, bigger companies have to maintain different policies for their staffs, it should be made mandatory for big as well as small companies to have Sexual Harassment Policy for their employees who should explain procedures for conducting complaints of the employees, rules for investigation and restrictions for every person of the company. It is the duty of the manager to create an environment where no staff should be afraid to speak about their problems occurring in the office. There should be zero-tolerance policy for every female working with unisex environment.

Rape is crime which destroys the mental, physical and psychological state of a woman and leaves a scar that stays forever with a woman. A rape survivor should not be blamed for whatever happened with her because it's very obvious that she must have tried to control the situation and she did as much as she was able too. On the first place, Rape can be prevented by teaching the boys that a female body is not meant for pleasure and should be respected as own mothers' and sisters'. Awareness makes a difference, no matter wherever it is, it spreads knowledge, so awareness about sex education should be made mandatory in schools and colleges. In the case of emergency, a girl should know the ways to knock down a culprit, and this step can be taken by schools and colleges by making self defense mechanism to be compulsory for girls. This is a offence against a women in which society plays an important role either before the crime or after it. If someone is witnessing something suspicious that is being carried out against a woman, then one should immediately inform the nearest police station or call 100. If unfortunately the crime is done, then the society around the rape survivor should take the responsibility to heal up the mental state of the victim as soon as possible. If not taken consideration, every year the crime rate will keep making new records.

There are so many pot holes which every female has to cross every day. No doubt that the females of our country as well as rest of the world are doing continuously great and have achieved so much. But few realities such as 11,332 women and girls getting trafficked every year and increased practice of dowry, rape and sexual harassment, eve teasing, molestation, sexual abuse, acid attacks, etc hit hard against all the development that has taken place. If compared to the past, women have achieved a lot till now but they need to be supported by the male dominant society too. Females still have to carve their way out of the socialized prejudices against by the society and all the

masculine dominants yet have to allow and accept the women to be equal participants in all the work.



LAW MANTRA
www.lawmantra.co.in